IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 687.

JOHN H. FAHEY and A. V. AMMANN, Individually and Respectively as FEDERAL HOME LOAN BANK COMMISSIONER and CONSERVATOR for the LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION,

Appellants,

vs.

PAUL MALFORNEE, C. H. NEWHOUSE, WINNIE BUCKBIN, *et al.*,

Appellees.

On Appeal from the District Court of the United States for the Southern District of California.

Comparison of Standards and Due Process Provisions Contained in Home Owners Loan Act of 1933, With Other Acts of Congress.

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INTRODUCTION.

For the aid of the Court in making a comparison of the pertinent provisions of the Home Owners Loan Act of 1933, as amended, with the pertinent provisions of three other acts which have recently been declared unconstitutional, as having delegated unfettered legislative authority without setting forth a definite, or any, statement of legis-

lative policy, standards, criteria or yardstick for the guidance of the legatee in enacting administrative rules and regulations, the following chart has been printed.

There is also shown a comparison of the provisions of the Home Owners Loan Act of 1933, as amended, with the provisions of the National Bituminous Coal Commission Act of 1937 (Guffey-Vinson) of the Public Utility Holding Company Act of 1938, which recently was held to be constitutional, as setting forth a statement of legislative policies, standards and provisions for due process, adequate to meet the constitutional requirements.

COMPARISON
of
CONSTITUTIONAL REQUIREMENTS
for
LEGISLATIVE STATEMENT OF POLICIES,
and
STANDARDS

DUE PROCESS PROVISIONS

I.

The Agricultural Adjustment Act of 1933 was Held to Be Unconstitutional in Part in the Case of United States v. Butler, 297 U. S. 1 (1935), Affirming the Decision of Butler v. United States, 78 F. (2d) 1 (1935) and Further Was Held to Be Unconstitutional in the Case of Chester C. Fosgate Co. v. Kirkland, 19 Fed. Supp. 152 (1937 Florida).

AGRICULTURAL ADJUSTMENT ACT: (1933)

"Section 601. Declaration of Emergency.—That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has

HOME OWNER'S LOAN ACT OF 1933

12 U. S. C. Sec. 1464, also Sec. 5 of Act.

Board authorized to prescribe rules Section 5(a) (1464(a)):

"Federal Savings and Loan Associations.—(a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and.

AGRICULTURAL ADJUSTMENT ACT. (1933)

seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce, in such commodities, and render imperative the immediate enactment of title I of the Act. (May 12, 1933, c. 25, Title I, Sec. 1, 48 Stat. 31.)

"602. Declaration of policy; establishment of base periods for prices. It is hereby declared to be the policy of Congress—

(1) Through the exercise of the powers conferred upon the Secretary of Agriculture under this act, to establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agri-

HOME OWNER'S LOAN ACT OF 1933

regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as 'Federal Savings and Loan Associations,' and to issue charters therefor giving primary consideration to the best practices of local mutual thrift and home financing institutions in the United States."

Unlimited delegation of authority to appoint conservator, merge, liquidate, etc., is contained in Sec. 5(d) ([illegible]4(d)) attacked in this action:

"(d) The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and

AGRICULTURAL ADJUSTMENT ACT. (1933)

cultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; and, in the case of all commodities for which the base period is the pre-war period, August, 1909, to July, 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during the base period. The base period in the case of all agricultural commodities except tobacco and potatoes shall be the pre-war period, August 1909-July 1914. In the case of tobacco and potatoes, the base period shall be the post-war period, August 1919-July 1929.

(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection

HOME OWNER'S LOAN ACT OF 1933

to release any such association from such control and permit its further operation.

(1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section. (May 12, 1933, c. 25, Sec. 2, 48 Stat. 32; Aug. 24, 1935, c. 641, Title I, Sec. 1(a, b), 49 Stat. 750.)

"608b. Marketing agreements.—In order to effectuate the declared policy of this title, the Secretary of Agriculture shall have the power, *after due notice and opportunity for hearing*, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or pro-

AGRICULTURAL ADJUSTMENT ACT, (1933)

HOME OWNER'S LOAN ACT OF 1933

duct thereof, only with respect to such handling as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof. The making of any such agreement shall not be held to be in violation of any of the anti-trust laws of the United States, and any such agreement shall be deemed to be lawful: Provided, That no such agreement shall remain in force after the termination of this Act. For the purpose of carrying out any such agreement the parties thereto shall be eligible for loans from the Reconstruction Finance Corporation under section 5 (Code, Title 15, Sec. 605) of the Reconstruction Finance Corporation Act. Such loans shall not be in excess of such amounts as may be authorized by the agreements. (May 12, 1933, c. 25, Title I, Sec. 8b; added Aug. 24, 1935, c. 641, Title I, Sec. 4, 49 Stat. 753.)

"608c. Orders.—(1) The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend, orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in this title as 'handlers.' Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof.

(2) Commodities to which applicable.—Orders issued pursuant to this section shall be applicable only to the following agricultural commodities and the products thereof (except prod-

AGRICULTURAL ADJUSTMENT ACT. (1933)

HOME OWNER'S LOAN ACT OF 1933

ucts of naval stores), or to any regional, or market classification of any such commodity or product. Milk, fruits (including pecans and walnuts but not including apples and not including fruits, other than olives, for canning), tobacco, vegetables (not including vegetables other than asparagus, for canning), soybeans and naval stores as included in the Naval Stores Act (7:91 to 99) and stands established thereunder (including refined or partially refined oleoresin).

(3) Notice and hearing. —Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to effectuate the declared policy of this chapter with respect to any commodity or product thereof specified in subsection (2) of this section, he shall give due notice of and an opportunity for a hearing upon a proposed order.

AGRICULTURAL ADJUSTMENT ACT. (1933)

HOME OWNER'S LOAN ACT OF 1933

(4) Finding and issuance of order.—After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by this section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this chapter with respect to such commodity."

II.

National Industrial Recovery Act, (Title 40, Paragraphs 401 to 414 (48 Stat. 195 Chapter 90) (June 1933)). This Act Was Held Partially Unconstitutional in the Case of Panama Refining Company v. Ryan, 293 U. S. 388 (1935), and the Balance of the Act Was Held Unconstitutional in the A. L. A. Schechter Poultry Company v. United States, 295 U. S. 495.

NATIONAL INDUSTRIAL RECOVERY ACT (1933).

Section 1:

"A National emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of

HOME OWNER'S LOAN ACT OF 1933

12 U. S. C. Sec. 1464, also Sec. 5 of Act.

Board authorized to prescribe rules Section 5(a) (1464(a)):

"Federal Savings and Loan Associations.—(a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization incorporation, examination, operation, and regulation of associations to be known as 'Federal Savings and Loan Associations,' and to issue charters therefor giving primary consideration to the best

NATIONAL INDUSTRIAL RECOVERY ACT (1933)

labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacities of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources." Section 3(d):

"Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public no-

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practices of local mutual thrift and home financing institutions in the United States."

Unlimited delegation of authority to appoint conservator, merge, liquidate, etc., is contained in Sec. 5(d) (1464(d)) attacked in this action:

"(d) The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation.

NATIONAL INDUSTRIAL RECOVERY ACT (1933)

tice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade or industry or subdivision thereof, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of the section."

Section 9(c):

"The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by fine of not to exceed $1,000, or imprisonment for not to exceed six months, or both."

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III.

Bituminous Coal Conservation Act of 1935 (49 Stats. 991, Chapter 824). Was Held to Be Unconstitutional in the Case of Carter v. Carter Coal Company, 298 U. S. 238 (1936).

BITUMINOUS COAL CONSERVATION ACT OF 1935

49 Stats. 991, Chap. 824

DECLARATION OF NECESSITY FOR REGULATION OF BITUMINOUS COAL INDUSTRY.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is hereby recognized and declared that the mining of bituminous coal and its distribution by the producers thereof in and throughout the United States are affected with a national public interest; that the service of bituminous coal in relation to the industrial activities, the transportation facilities, the health and comfort of the people of the United States; the conservation of bituminous coal deposits in the United States by controlled production and economical mining and marketing; the maintenance of just

HOME OWNER'S LOAN ACT OF 1933

12 U. S. C. Sec. 1464, also Sec. 5 of Act.

Board authorized to prescribe rules Section 5(a) (1464(a)):

"Federal Savings and Loan Associations.—(a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as 'Federal Savings and Loan Associations,' and to issue charters therefor giving primary consideration to the best practices of local mutual thrift and home financing institutions in the United States."

BITUMINOUS COAL CONSERVATION ACT OF 1935.

and rational relations between the public owners, producers, and employees: the right of the public to constant and ample supplies of coal at reasonable prices; and the general welfare of the Nation require that the bituminous coal industry be regulated as herein provided.

It is further recognized and declared that all production of bituminous coal and distribution by the producers thereof bear upon and directly affect its interstate commerce and render regulation of such production and distribution imperative for the protection of such commerce and the national public service of bituminous coal and the normal governmental revenues derivable from such industry; that the excessive facilities for the production of bituminous coal and the overexpansion of the industry have led to practices and methods of production, distribution and marketing of such coal that waste such coal resources of the Na-

HOME OWNERS LOAN ACT OF 1933.

Unlimited delegation of authority to appoint conservator, merge, liquidate, etc., is contained in Sec. 5(d) (1464(d)) attacked in this action:

"(d) The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation.

BITUMINOUS COAL CONSERVATION ACT OF 1935.

tion, disorganize the interstate commerce in such coal and portend the destruction of the industry itself, and burden and obstruct the interstate commerce in such coal, to the end that control of such production and regulation of the prices realized by the producers thereof are necessary to promote its interstate commerce, remove burdens and obstructions therefrom, and protect the national public interest thereon; that practices prevailing in the production of bituminous coal directly affect its interstate commerce and require regulation for the protection of that commerce, and that the right of mine workers to organize and collectively bargain for wages, hours of labor, and conditions of employment should be guaranteed in order to prevent constant wage cutting and the establishment of disparate labor costs detrimental to fair competition in the interstate marketing of bituminous coal, and in order

HOME OWNERS LOAN ACT OF 1933.

BITUMINOUS COAL CONSERVATION ACT OF 1935.

to avoid those obstructions to its interstate commerce that recur in the industrial disputes over labor relations at the mines.

NATIONAL BITUMINOUS COAL COMMISSION

"Sec. 2(a) . . .

"Such commission shall have the power to make and promulgate all reasonable rules and regulations for carrying out the provisions of this Act, and shall annually make full report of its activities to the Secretary of the Interior for transmission to Congress Upon all matters within its jurisdiction coming before it for determination, it shall have the power and duty of hearing evidence and finding facts upon which its orders and action may be predicated, and its findings of fact supported by any substantial evidence shall be conclusive upon review thereof by any court of the United States. . . ."

HOME OWNERS LOAN ACT OF 1933.

BITUMINOUS COAL CONSERVATION ACT OF 1935.

TAX ON BITUMINOUS COAL

"Sec. 3. . . . No producer shall by reason of his acceptance of the code provided for in section 4 or of the drawback of taxes provided in section 3 of this Act be held to be contesting the constitutionality of any provision of said code or its validity as applicable to such producer.

BITUMINOUS COAL CODE

"Sec. 4. The provisions of this section shall be formulated by the Commission into a working agreement, to be known as the 'Bituminous Coal Code', and herein referred to as the 'Code'. Producers accepting and operating under its provisions are herein referred to as 'Code Members'.

For the purpose of carrying out the declared policy of this Act, the code shall contain the following conditions, provisions, and obligations which will tend to regulate interstate commerce in bituminous coal and transactions directly affecting interstate commerce in bituminous coal."

HOME OWNERS LOAN ACT OF 1933.

No such provisions. This right here being denied.

No such standards provided.

BITUMINOUS COAL CONSERVATION ACT OF 1935.	HOME OWNERS LOAN ACT OF 1933.
BITUMINOUS COAL CONSERVATION ACT OF 1935 "PART I-ORGANIZATION AND PRODUCTION "(a) . . . Marketing agencies may be established or maintained within any district by a voluntary association of producers within any producing field therein, as such producing field may be defined by the district board, and function under such general rules and regulations as may be prescribed by the district board, with the approval of the Commission, for the purpose of marketing their coal with due respect for the standards of unfair competition as defined in this Act. Each such marketing agency shall impose no unreasonable or inequitable conditions of membership and shall be truly representative of at least one-third of the tonnage of any producing field or group of producing fields. . . ."	**No such standards.**

BITUMINOUS COAL CONSERVATION ACT OF 1935.

"PART II-MARKETING"
"MINIMUM-PRICE-AREA TABLE"

". . . The minimum prices so established shall reflect, as nearly as possible, the relative market value of the various kinds, qualities, and sizes of coal, shall be just and equitable as between producers within the district, and shall have due regard to the interests of the consuming public. The procedure for establishment of minimum prices shall be in accordance with rules and regulations to be approved by the Commission."

* * *

"Each district board shall, on its own motion or when directed by the Commission, establish reasonable rules and regulations incidental to the sale and distribution of coal by code members within the district. Such rules and regulations shall not be inconsistent with the requirements of this section and shall conform to the standards of fair competition hereinafter established.

HOME OWNERS LOAN ACT OF 1933.

No such standards.

Similar edicts and fiats permitted.

BITUMINOUS COAL CONSERVATION ACT OF 1935.

Such rules and regulations shall be submitted by the district board to the Commission with a statement of the reasons therefor, and the Commission may approve, disapprove, or modify the same, and such approval, disapproval or modification shall be binding upon all code members within the district.

"(b). District Boards shall, under rules and regulations established by the Commission, coordinate in common consuming market areas upon a fair competitive basis the minimum prices and the rules and regulations established by them, respectively, under subsection (a) hereof. Such coordination, among other factors, but without limitation shall take into account the various kinds, qualities, and sizes of coal, and transportation charges upon coal. All minimum prices established for any kind, quality, or size of coal for shipment into any consuming market area shall be just and equit-

HOME OWNERS LOAN ACT OF 1933.

No such standards.

able, and not unduly prejudicial or preferential, as between and among districts and shall reflect, as nearly as possible, the relative market values, at points of delivery in each common consuming market area, of the various kinds, qualities and sizes of coal produced in the various districts; to the end of affording the producers in the several districts substantially the same opportunity to dispose of their coals upon a competitive basis as has heretofore existed. The minimum prices established as a result of such coordination shall not, as to any district, reduce or increase the return per net ton upon all the coal produced therein below or above the minimum return as provided in subsection (a) of this section by an amount greater than necessary to accomplish such coordination, to the end that the return per net ton upon the entire tonnage of the minimum price area shall approximate and be not less than the weighted

BITUMINOUS COAL CONSERVATION ACT OF 1935.

average of the total costs per net ton of the tonnage of such minimum price area. Such coordinated prices and rules and regulations, together with the data upon which they are predicated, shall be submitted to the Commission, which may approve, disapprove, or modify the same to establish and maintain such fair competitive relationship, and such approval, disapproval, or modification shall be binding upon all code members within the affected districts. No minimum price shall be established that permits dumping. On the petition of any district board or other party in interest or on its own motion, after notice to the district boards, the Commission may at any time conduct hearings to determine whether the foregoing method of fixing minimum prices under subsection (a) is prejudicial to any district with respect to the fair opportunity of such district to market its coal. Should the Commission so

HOME OWNERS LOAN ACT OF 1933.

BITUMINOUS COAL CONSERVATION ACT OF 1935.

find, and further find that the prejudice cannot be removed through the coordination of minimum prices as provided for in this subsection (b), then the Commission may establish a different basis for determining minimum prices in such district, to the end that fair and competitive prices shall prevail in the marketing of coal produced in such district: *Provided*, That the minimum prices so established as to any such district shall yield a return, per net ton, not less than the weighted average of the total costs, per net ton, of the tonnage of such district.

"c. When, in the public interest, the Commission deems it necessary to establish maximum prices for coal in order to protect the consumer of coal against unreasonably high prices therefor, the Commission shall have the right to fix maximum prices free on board transportation facilities for coal in any district. Such maximum prices shall

HOME OWNERS LOAN ACT OF 1933.

BITUMINOUS COAL CONSERVATION ACT OF 1935.

be established at a uniform increase above the minimum prices in effect within the district at the time, so that in the aggregate the maximum prices shall yield a reasonable return above the weighted average total cost of the district. *Provided* That no maximum price shall be established for any mine which shall not return cost plus a reasonable profit.

"d. If any code member or district board, or any State or political subdivision of a State, shall be dissatisfied with such coordination of prices or rules and regulations, or by the maximum prices established for him or it pursuant to subsection (c) of this section, he or it shall have the right, by petition, to make complaint to the Commission, and the Commission shall, under rules and regulations established by it and after notice and hearing, make such order as may be required to effectuate the purpose of subsections (b) and (c) of this section,

HOME OWNERS LOAN ACT OF 1933.

NO PROCEDURE PROVIDED.

BITUMINOUS COAL CONSERVATION ACT OF 1935.

which order shall be binding upon all parties in interest. Pending final disposition of such petition, and upon reasonable showing of necessity therefor, the Commission may make such preliminary or temporary order as in its judgment may be appropriate and not inconsistent with the provisions of this Act. . . ."

"UNFAIR METHOD OF COMPETITION.

". . . (j) The Commission shall have jurisdiction to hear and determine written complaints made charging any violation of the code specified in this part II. It shall make and publish rules and regulations for the consideration and hearing of any such complaint, and all interested parties shall be required to conform thereto. The Commission shall make due effort toward adjustment of such complaints and shall endeavor to compose the differences of the parties, and shall make such order or orders in the premises

HOME OWNERS LOAN ACT OF 1933.

No Review Provided.

BITUMINOUS COAL CONSERVATION ACT OF 1935.

ises, from time to time, as the facts and the circumstances warrant. Any such order shall be subject to review as are other orders of the commission."

PART III—LABOR RELATIONS.

"d. The Labor Board shall sit at such places as its duties require, and may appoint an examiner to report evidence for its finding in any particular case. It shall notify the parties of any dispute of the time and place of the taking of evidence, or the hearing of the cause, and its finding of facts supported by any substantial evidence shall be conclusive upon review thereof by any court of the United States. It shall transmit its findings and order to the parties interested and to the Commission. The Commission shall take no action thereon for sixty days after the entry of the order of the Labor Board; and if within such sixty days an appeal is taken under the provisions

HOME OWNERS LOAN ACT OF 1933.

No such hearings, Notice or appeal provided.

Bituminous Coal Conservation Act of 1935.	Home Owners Loan Act of 1933.
of section 16 of this Act, no action on such finding and order shall be taken by the Commission during the pendency of the appeal.	
"Organization of the Code.	
"Sec. 5(d) Any code member who shall be injured in this business or property by any other code member by reason of the doing of any act which is forbidden or the failure to do any act which is required by this Act or by the code, may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover three-fold damages by him sustained, and the cost of suit, including a reasonable attorney's fee."	No Provision for Court Enforcement.
"Sec. 6(b) Any person aggrived by an order issued by the Commission or Labor Board in a proceeding to which such person is	No provision for appeals to court.

a party may obtain a review of such order in the Circuit Court of Appeals of the United States, within any circuit wherein such person resides or has his principal place or business, or in the United States Court of Appeal for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission or Labor Board be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon any member of the Commission or Labor Board, as the case may be, and thereupon the Commission or Labor Board as the case may be, shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, and enforce or set aside such order, in

Courts deprived of jurisdiction.

BITUMINOUS COAL CONSERVATION ACT OF 1935.

whole or in part. No objection to the order of the Commission or Labor Board shall be considered by the court unless such objection shall have been urged below. The finding of the Commission or Labor Board as to the facts, if supported by substantial evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Commission or Labor Board, the court may order such additional evidence to be taken before the Commission or Labor Board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission or Labor Board, as the case may be,

HOME OWNERS LOAN ACT OF 1933.

may modify its findings as to the facts, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, and enforcing or setting aside, in whole or in part, any such order of the Commission or Labor Board as the case may be, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C. title 28, secs. 346 and 347)."

"(c) If any code member fails or neglects to obey any order of the Commission while the same is in effect, the Commission in its discretion may apply to the

No enforcement by Court.

BITUMINOUS COAL CONSERVATION ACT OF 1935.

HOME OWNERS LOAN ACT OF 1933.

Circuit Court of Appeals of the United States within any circuit where such code member resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the Commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such code member and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the Commission. The findings of the Commission as to facts, if supported by substantial evidence, shall be conclusive. If either party shall apply to the court for leave to adduce

BITUMINOUS COAL CONSERVATION ACT OF 1935.

additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper.

"The Commission may modify its findings as to the facts of make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which if supported by substantial evidence shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final except that the same shall

HOME OWNERS LOAN ACT OF 1933.

No Court Review.

be subject to review by the Supreme Court upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., Title 28, secs. 346 and 347).

"(d) The jurisdiction of the Circuit Court of Appeals of the United States or the United States Court of Appeals for the District of Columbia, as the case may be, to enforce, set aside, or modify orders of the Commission or Labor Board shall be exclusive.

"Such proceedings in the Circuit Court of Appeals or the United States Court of Appeals for the District of Columbia, as the case may be, shall be given precedence over other cases pending therein, and shall be in every way expedited."

IV.

National Bituminous Coal Commission Act of 1937 Guffey-Vinson). This Is an Act Which Has Been Held Constitutional as Setting Forth Sufficient Statement of Legislative Policy, Standards and Provisions for the Protection of Due Process.

Note: This is extracts from the National Bituminous Coal Commission Act of 1937, which is a rewriting of the formerly declared unconstitutional "Bituminous Coal Conservation Act of 1935" which was held unconstitutional by this court in the case of *Carter v. Carter Coal Company*, 298 U. S. 238. The Act was rewritten to provide the constitutionally required legislative statement of policy, standards and safeguards for due process, and was held constitutional in the case of *Sunshine Coal Co. v. Adkins*, 310 U. S. 381 (1940).

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50 U. S. Stats. at Large. Part 1, page 72.

STATEMENT OF POLICY.

"That regulation of the sale and distribution in interstate commerce of bituminous coal is imperative for the protection of such commerce; that there exist practices and methods of distribution and marketing of such coal that waste the coal resources of the Nation and disorganize, burden, and obstruct interstate com-

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12 U. S. C. Sec. 1464, also Sec. 5 of Act.

Board authorized to prescribe rules Section 5(a) (1464(a)):

"Federal Savings and Loan Associations.—(a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may pre-

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merce in bituminous coal, with the result that regulation of the prices thereof and of unfair methods of competition therein is necessary to promote interstate commerce in bituminous coal and to remove burdens and obstructions therefrom."

Section 2(a):

"There is hereby established in the Department of the Interior a National Bituminous Coal Commission (herein referred to as Commission), which shall be composed of seven members appointed by the President, by and with the advice and consent of the Senate, for a term of four years . . .

". . . Such Commission shall have the power to make and promulgate all reasonable rules and regulations for carrying out the provisions of this Act and shall annually make full report of its activities to the Secretary of the Interior

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scribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as 'Federal Savings and Loan Associations,' and to issue charters therefor giving primary consideration to the best practices of local mutual thrift and home financing institutions in the United States."

Unlimited delegation of authority to appoint conservator, merge, liquidate, etc., is contained in Sec. 5(d) (1464(d)) attacked in this action:

"(d) The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such associa-

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for transmission to Congress. A majority of the Commission shall constitute a quorum for the transaction of business, and a vacancy in the Commission shall not impair the right of the remaining members to exercise all the power of the Commission. No order which is subject to judicial review under section 6, and no rule or regulation which has the force and effect of law, shall be made or prescribed by the Commission, unless it has given reasonable public notice of a hearing, and unless it has afforded to interested parties an opportunity to be heard, and unless it has made findings of fact. Such findings, if supported by substantial evidence shall be conclusive upon review thereof by any court of the United States. . . ."

Section 6(a), page 85:

"All rules, regulations, determinations, and promulgations of any district

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tion from such control and permit its further operation.

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board shall be subject to review by the Commission upon appeal by any producer and upon just cause shown shall be amenable to the order of the Commission; and appeal to the Commission shall be a matter of right in all cases to every producer and to all parties in interest, including any State or any political subdivision thereof."

Section 6(b), page 85:

"Any person aggrieved by an order issued by the Commission in a proceeding to which such person is a party may obtain a review of such order in the Circuit Court of Appeals of the United States, within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or

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set aside in whole or in part. . . ."

Section 6(c), page 86:

"(c) If any code member fails or neglects to obey any order of the Commission while the same is still in effect, the Commission in its discretion may apply to the Circuit Court of Appeals of the United States within any circuit where such code member resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the Commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such code member and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and

enter upon the pleadings, testimony, and proceedings set forth in such transcript *a cedree* affirming, modifying, or setting aside the order of the Commission. The findings of the Commission as conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper.

"The Commission may modify its findings as to the facts or make new findings, by reason of the additional evidence so taken, and it shall file such modi-

fied or new findings, which if supported by substantial evidence shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, Secs. 346 and 347).

"(d) The jurisdiction of the Circuit Court of Appeals of the United States or the United States Court of Appeals for the District of Columbia, as the case may be to enforce, set aside, or modify orders of the Commission shall be exclusive."

Sec. 8. (a):

"The members of the Commission are authorized to administer oaths to witnesses appearing before the

Commission and to authorize the taking of depositions in any proceedings; and, for the purpose of conducting its investigations, said Commission shall have full power to issue subpoenas and subpoenas *duces tecum*, which shall be as nearly as may be in the form of subpoenas issued by District Courts of the United States. In case of contumacy by or refusal to obey a subpoena issued to any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witness and the production of books, papers, correspondence, memoranda, and other records. Upon the filing of the application for such aid with the clerk of the court the court shall, either in term time or vacation, forthwith enter an

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order or record, requiring such person to appear before such court at a time stated in the order not more than ten days from the entry of the order (unless for good cause shown such time is extended), and show cause why he should not be required to obey such subpoena, and upon his failure to show cause it shall be the duty of the court to order such witness to appear before the said Commission and give such testimony or produce such evidence as may be lawfully required by said Commission. The District Court, either in term time or vacation, shall have full power to punish for contempt as in other cases of refusal to obey the process and order of such court. Witnesses summoned before the Commission or when depositions are taken upon order of the Commission, shall be paid the same fees as are paid for like services in courts of the United States.

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(b) No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and other records and documents before the Commission, or in obedience to the subpoena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subject to any penalty of forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying."

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V.

PUBLIC UTILITY HOLDING CO. ACT (1938)

This Act Was Recently (November 25, 1946) Held to Be Constitutional as Providing Sufficient Statement of Legislative Policy, Standards and Safe-Guards for Due Process in the Case of American Power and Light Company vs. Securities and Exchange Commission, 91 L. Ed. Advance Opinion, Page 89 and in the Companion Case of North American Company vs. Securities and Exchange Commission, 90 L. Ed. Advance Opinion 737.

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Sec. 11(b) 1 and 2 also 15 U. S. C., Sec. 79k.

Sec. 11(b)(1), *i. e.*, sec. 79k(b) of Title 15 U. S. C. is attacked in *North American Co. v. Securities and Exchange Commission*, 90 L. Ed. Adv. Op. 737. The Section reads as follows:

"(b) Limitations on operations of holding-company systems.—It shall be the duty of the Commission, as soon as practicable after January 1, 1938:

(1) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company

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12 U. S. C. Sec. 1464, also Sec. 5 of Act.

Board authorized to prescribe rules Sectjon 5(a) (1464(a)):

"Federal Savings and Loan Associations.—(a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as 'Federal Sav-

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thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system; Provided, however, That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

(A) Each of such additional systems can not be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

(B) All of each additional systems are located in one State, or in adjoining

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ings and Loan Associations,' and to issue charters therefor giving primary consideration to the best practices of local mutual thrift and home financing institutions in the United States."

Unlimited delegation of authority to appoint conservator, merge, liquidate, etc., is contained in Sec. 5(d) (1464(d)) attacked in this action:

"(d) The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation.

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States, or in a contiguous foreign country; and

(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems.

Sec. 11(b)2; Sec. 79k (b)(2) of Title 15 U. S.

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C. is attacked in *American Power and Light Co. v. Securities and Exchange Commission*, 91 L. Ed. Adv. Op. 89.

The section reads as follows:

"(2) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holdings, of such holding-company system. In carrying out the provisions of this paragraph the Commission shall require each registered holding company (and any company in the same holding company system with such holding company) to take such action as the Commis

sion shall find necessary in order that such holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company. Except for the purpose of fairly and equitably distributing voting power among the security holders of such company, nothing in this paragraph shall authorize the Commission to require any change in the corporate structure or existence of any company, or of any company whose principal business is that of a public-utility company.

The Commission may by order revoke or modify any order previously made under this subsection, if, after notice and opportunity for hearing, it finds that the conditions upon which the order was predicated do not exist. Any order made under this subsection shall be subject to judicial review as provided in section 24 (Sec. 79 of this title)."

Public Utility Holding Co. Act (1938)	Home Owner's Loan Act of 1933
The subject of hearings by the Commission is set forth in Sec. 19 (79a):	
"Hearings by Commission.—Hearings may be public and may be held before the Commission, any member or members thereof, or any officer or officers of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before the Commission, the Commission, in accordance with such rules and regulations as it may prescribe, shall admit as a party any interested State, State commission, State securities commission, municipality, or other political subdivision of a State, and may admit as a party any representative of interested consumers or security holders, or any other person whose participation in the proceedings may be in the public interest or for the protection of investors or consumers. (Aug. 26, 1935, c. 657, Title I, Sec. 19, 49 Stat. 832.)	No corresponding provisions.

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A court review of orders is prescribed in Sec. 24 (79x):

"Court Review of orders.—(a) Any person or party aggrieved by an order issued by the Commission under this title may obtain a review of such order in the circuit court of appeals of the United States within any circuit wherein such person resided or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon any member of the Commission, or upon any offer thereof designated by the Commission for that purpose and thereupon the Commission shall certify and file in the court a transcript of record upon which the order complained of was

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No corresponding provisions.

entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission or unless there were reasonable grounds for failure so to do. The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the Court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms

and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended. 28; 346, 347.)

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Commission's order. (Aug. 26, 1935, c. 687, Title I, Sec. 24, 49 Stat. 834.)

Public Utility Holding Co. Act (1938)	Home Owner's Loan Act of 1933
The District Courts are expressly given jurisdiction of offenses and suits in Sec. 25(79y):	No corresponding provisions.
"Jurisdiction of offenses and suits. The District Courts of the United States, the District Court of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this title or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought	

in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this title or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 128 and 240 of the Judicial Code, as amended (U. S. C Title 28, secs. 225 and 347) (26; 225, 347), and section 7, as amended, of the Act entitled "An Act to Establish a court of appeals for the District of Columbia," approved February 9, 1893 (D. C. Code (1929), Title 18, sec. 26), (D. C. Code 1940, Sec.

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17-.01). No costs shall be assessed for or against the Commission in any proceeding under this title brought by or against the Commission in any court. (Aug. 26, 1935, c. 687, Title I, Sec. 25, 49 Stat. 835.)

Respectfully submitted,

WYCKOFF WESTOVER,

Attorney for Appellee Share Holder Members Protective Committee.